

FINAL STATEMENT OF REASONS:

The California Department of Corrections and Rehabilitation (CDCR) proposes to adopt Section 3269 of Subchapter 4, Chapter 1 of Title 15, Division 3, of the California Code of Regulations (CCR), concerning inmate housing assignments, and Subsection 3315(f)(5)(N)(1) and (2) concerning the disciplinary ramifications for failure to comply.

Historically, it has been a generally accepted practice in the CDCR that inmates are expected to double cell. As California's inmate population increased beginning in the 1980's, the Department maximized its available housing by double celling inmates when appropriate. Other housing arrangements such as dorms and gymnasiums were also utilized. The proposed regulation merely provides in writing the appropriate authority and direction for the review and approval for placement of an inmate into an appropriate housing assignment. The proposed regulations do not change any of the long existing practices for assigning appropriate housing. The only changes are the remedial sanctions to be imposed on an inmate who refuses to accept appropriately assigned housing. This policy was reiterated and stipulated via Departmental memorandum dated April 25, 2003, although regulatory language was not correspondingly adopted.

In late 2006, several inmates petitioned the Office of Administrative Law (OAL) contending that the memorandum constituted an underground regulation, and the OAL agreed. This matter has since been filed in court. The Department asserts that it would be a serious development should an inmate successfully enjoin the Department in the courts to overturn the Department's double cell practices, particularly in light of our overcrowding issues.

This action will ensure that these provisions provide the appropriate regulatory authority and direction for the review and approval for placement of an inmate into an appropriate housing assignment. The remedial sanctions must also have the force of law should an inmate who is eligible for double cell housing refuse to accept that housing assignment as directed by custody staff, and thereby impede peace officers in the performance of their duties.

Lastly, these regulations incorporate by reference into the text CDC Form 114-A1 (rev. 10/98), Inmate Segregation Profile, and Form 1882 (rev. 2/07), Initial Housing Review. Because there are over 1,400 forms for use within the Department and its adult operations, and the vast majority of these forms, including the CDC Form 114-A1 and the Form 1882, are for staff and internal management use only, the Department pursuant to CCR Section 20(c)(1) has determined that it would be impractical and unnecessary to publish these forms in the CCR.

Section 3269 is adopted to establish that inmates shall accept Inmate Housing Assignments (IHA's) as directed by staff. All inmates are expected to double cell regardless of their housing location if staff determines, based on an inmate's case factors, that they are suitable for double celling, or be subject to disciplinary action for resisting or obstructing a peace officer's duties. The reason for the ongoing need to double cell inmates is to maintain the efficient housing of inmates in a crowded prison system. Inmates with low classification scores are typically housed in a dorm setting, where inmates have their living quarters in a large room. Inmates with higher classification scores are housed in a Level III or Level IV institution that contain cells that are capable of housing two inmates. It is important for the smooth operation of the institution for inmates to respond to an appropriate housing assignment. Housing assignments for inmates are not based on random cell availability. Rather, they are based on available documentation and individual case factors reviewed by

assigned Correctional Counselors. However, inmates are not entitled to single cell assignments, or a housing location or cellmate of their choice. Inmates may be assigned to single cell status should case factors warrant such, to be reviewed at a minimum at the inmates annual review. Case factors for single cell consideration may range from a history of mental illness, in-cell abuse, or victimization, to name just a few examples.

Subsection 3269(a) is adopted to detail a number of the various case factors that are required to be evaluated by the custody supervisor responsible for screening an inmate for an appropriate housing assignment. Some of the factors that must be taken into consideration in developing an appropriate housing assignment include the length of an inmate's sentence, the criminal influence that an inmate has demonstrated over other inmates, and documentation that an inmate has been the victim of a sexual assault. The case factors that have been listed in this regulation, while not all-inclusive, have been selected because historically they are the best indicators of compatibility for double celling.

Subsection 3269(b) is adopted to instruct staff of the appropriate form to complete each time an inmate is to have a new housing assignment, which will include information on whether the inmate is suitable for dorm or celled housing with or without special restrictions. Restrictions are any case factors that may limit the inmate's housing placement options. Examples of such restrictions would include segregated housing placement, or medical or mental health issues. Also, staff must exercise care when developing a housing assignment for special category inmates covered under specific litigation. The development of an appropriate housing assignment is not done on a random or simple availability basis. Rather, experienced staff evaluate numerous case factors to make the assignment.

Subsection 3269(c) is adopted to clarify that staff will use the same criteria when screening an inmate for placement in a segregated housing assignment as would be used when placing an inmate into the general population, and to clarify that an inmate placed in segregated housing is expected to double cell unless approved for single cell assignment. While some inmates may require placement into a segregated housing unit, that in and of itself is not sufficient reason to warrant single cell status.

Subsection 3269(d) is adopted to provide staff with information about when an inmate should be considered for single cell assignment. Those inmates that have a demonstrated pattern of behavior of in-cell abuse, violence or predatory behavior towards a cell partner, or have been victimized in-cell by another inmate, shall be considered for single cell status pursuant to CCR subsection 3377.1(c). Review of the need for continued single cell status will be examined at least at the inmate's annual review.

Subsection 3269(e) is adopted to require that those inmates that are determined to be suitable only for single cell housing must be referred to a classification committee for evaluation if the single cell custody designation is appropriate. Additionally, an inmate that has been assigned single cell status, but has since proven capable of being double celled, must also be referred to a classification committee to evaluate whether the single cell custody designation is no longer warranted. The assignment of single cell status, and the subsequent removal of single cell status, are important to the overall safety and security of staff, the inmate, as well as other inmates, and requires evaluation by a committee as opposed to a single housing officer.

Subsection 3269(f) is adopted to address those situations where clinical staff recommend an inmate for single cell status due to mental health or medical concerns. That

recommendation must also be referred to a classification committee, which shall consider those recommendations with the assistance of the clinician that is participating in the committee. Single cell status that is based on a clinical recommendation is usually only a temporary measure to be reviewed on a periodic basis by a classification committee. Classification committee review for clinically recommended single cell status will be conducted at an inmate's annual review, or more frequently if the clinician recommends or the inmate requests removal from single cell status.

Subsection 3269(g) is adopted to advise staff of the appropriate disciplinary ramifications for an inmate that refuses a double cell assignment. An inmate that refuses to accept appropriately assigned housing will receive a Rules Violation Report (RVR) for Refusing to Accept Assigned Housing, for the specific act of Willfully Resisting, Delaying, or Obstructing any Peace Officer in the Performance of Duty. An inmate's continued refusal to accept assigned housing will result in the issuance of additional disciplinary reports and consideration for more restrictive housing. As stated earlier in the regulations, all inmates are expected to be double celled if such housing assignment is deemed to be appropriate, in order to maintain the efficient operation of the institution.

Subsections 3315(f)(5)(N)(1) and (2) are adopted to clarify that an RVR issued for Refusing to Accept Assigned Housing is a serious rules violation, and will result in the loss or reduction of privileges such as personal canteen, appliances, vendor packages, telephone privileges, and personal property for specified time periods for both first and second/subsequent offenses. The implementation of this loss of privileges is consistent with other rules infractions, such as refusing to accept an integrated housing assignment as per CCR section 3369.1

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action, or would be as effective and less burdensome to affected private persons than the action proposed.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the facts, evidence, and documents initially identified in the Initial Statement of Reasons support an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

ASSESSMENTS, MANDATES AND FISCAL IMPACT:

This action will neither create nor eliminate jobs in the State of California, nor result in the elimination of existing business, or create or expand business in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not directly affected by the internal management of State prisons, or on prison housing costs, and no costs or

reimbursements to any local agency or school district within the meaning of Government Code Section 17561.

PUBLIC HEARING COMMENTS:

Public Hearing: Held May 30, 2008, at 9:00 a.m., at 610 Bercut Avenue, Sacramento.

SUMMARIES AND RESPONSES TO ORAL COMMENTS AT THE PUBLIC HEARING:

There was one commenter present at the public hearing, who elected to leave written comments rather than to present oral comments.

SUMMARIES AND RESPONSES TO WRITTEN COMMENTS:

COMMENTER #1

Comment A: Commenter states that the Department can't or shouldn't force an inmate to live with just anyone.

Accommodation: None.

Response A: The Department contends that the proposed regulations do not alter the process of determining inmate housing assignments. Historically, it has been a generally accepted practice in the Department to expect inmates to double cell, and the majority of inmate housing assignments are completed with that consideration in mind. While the Department contends that the ability for an inmate to choose their own cellmate is not a privilege, the Department also asserts that the proposed inmate housing assignment regulations do not call for the forced housing of inmates, nor do they supersede existing Departmental safety and security measures. Generally, much more consideration must be given to the housing assignment of an inmate who is newly arrived at a facility. An inmate's integrated housing eligibility code and eligibility for double celling must be evaluated, potential enemy concerns must be reviewed, and the particular housing unit must comport with the inmate's work and privilege group. A classification committee will make the initial housing assignment, and a unit housing officer will make the specific cell assignment. The proposed regulations do, however, provide stronger disciplinary ramifications for failure to comply with a housing assignment. Also, consideration can be given, once an inmate has become established at a particular facility, to that inmate's request to be housed with another inmate of their choosing.

Comment B: How can the Department just say that these two inmates are compatible by reading their C-files, because a lot of stuff about those two inmates may not be in their files?

Accommodation: None.

Response B: The Department acknowledges that certainly not all information pertaining to an inmate will be contained in their C-file. However, there will be sufficient information for a classification committee to make an intelligent and informed decision as to an appropriate and reasonable housing assignment. Additionally, the inmate is allowed and encouraged to provide input into the decision making process regarding their housing assignment. Since these regulations merely put into CCR Title 15 the long-standing housing assignment practices of the Department, counseling and custody staff have considerable training and experience with making appropriate inmate housing assignments.

Comment C: The various races on a yard have their own politics such that while they may be compatible during yard time, they would not be compatible if forced to live together.

Accommodation: None.

Response C: The Department does not develop its rules and policies based on inmate politics. While the comment may be designed to address concerns over the integrated housing of inmates, there is some applicability to the double celling of inmates. The Department has long held to the standard that inmates are expected to double cell, and inmates have adhered to that standard. With respect to the integrated housing of inmates, the Department asserts that the plan does not call for forced integration, and the plan also does not supersede existing Departmental safety and security measures. Eligibility for integration will ultimately be determined by classification committee action and will involve close scrutiny of all of an inmate's case factors. If, however, there are no case factors that would preclude two inmates of different races from being housed together, there is the expectation they will do so without disruption.

COMMENTER #2

Comment A: Inmates that are "life without", or that have a long sentence, should be allowed to be single celled or at least be able to chose if they want to cell with someone.

Accommodation: None.

Response A: The Department asserts that the length of an inmate's sentence, or an inmate's age if they have been serving a particularly long sentence, does not establish a housing privilege or right for inmates. They are not precluding factors either that would somehow exempt an inmate from being considered for double celling. Historically, it has been a generally accepted practice in the Department that inmates are expected to double cell. The housing policy has been established to provide that inmates shall accept Inmate Housing Assignments as directed by staff. All inmates are expected to double cell regardless of their housing location if staff determine that they are suitable for double celling, or be subject to disciplinary action for resisting or obstructing a peace officer in the performance of their duty. The reason for the need to double cell inmates is to continue to efficiently utilize available housing, as well as to allow an inmate an opportunity to reintegrate successfully back into a diverse society upon their discharge from prison.

Inmates with low classification scores are typically housed in a dorm setting, where inmates have their living quarters in a large room. Inmates with higher classification scores are housed in a Level III or Level IV institution that contain cells that are capable of housing two inmates. It is important for the smooth operation of the institution for inmates to respond to an appropriate housing assignment. Housing assignments for inmates are not based on random cell availability. Rather, they are based on available documentation and individual case factors reviewed by assigned Correctional Counselors. However, inmates are not entitled to single cell assignments, or a housing location or cellmate of their choice.

COMMENTER #3

Comment A: The Department is trying to make this rule change so that they can force the inmate population, via disciplinary threats, into accepting housing assignments in cells that were designed to house one inmate. According to the court case *Rhodes v. Chapman*, 69 I.Ed.2d 59, the actions proposed in these regulations would violate the Eighth Amendment regarding cruel and unusual punishment. The U. S. Supreme Court stated in that case that each inmate requires at least 50-55 square feet of floor space to live in a constitutional prison cell.

Accommodation: None.

Response A: Commenter, an inmate housed with the CDCR, should be aware that historically it has been a generally accepted practice that inmates are expected to double cell. The proposed regulation merely provides in regulations the appropriate authority and direction for the review and approval for placement of an inmate into an appropriate housing assignment. The only change are the specific remedial sanctions to be imposed on an inmate who refuses to accept appropriately assigned housing.

The U. S. Supreme Court in *Rhodes v. Chapman*, 452 U.S. 337 (1981), held that the double celling in question was not cruel and unusual punishment prohibited by the Eighth Amendment. The Court did acknowledge that conditions of confinement must not involve the unnecessary infliction of pain, and they must not be disproportionate to the severity of the crime warranting imprisonment. Conditions that cannot be said to be cruel and unusual under contemporary standards are not unconstitutional. Rather, to the extent that such conditions are restrictive or harsh constitute part of the penalty that a criminal must pay for their crimes against society. The court also noted that most prison facilities have a dayroom that inmates can access at specific times. Each dayroom contains a wall-mounted television, card tables, and chairs. These dayrooms were determined by the court to be a part of the cell in that they are designed to furnish the type of recreation which an ordinary citizen would seek in their living room or den.

The Supreme Court concluded that double celling does not constitute cruel and unusual punishment. Double celling was made necessary by the increase in prison population, and did not lead to deprivations of essential food, medical care, or sanitation. Nor did double celling increase violence among inmates or create other conditions intolerable for prison confinement. The court recognized that job and educational opportunities diminished marginally as a result of double celling, although limited work hours and delay before receiving an education do not inflict unnecessary pain. The court determined that the five considerations on which the District Court relied are insufficient to support its constitutional conclusion, and that at most the considerations amount to only a theory that double celling inflicts pain. However, the Supreme Court also noted that the Constitution does not mandate comfortable prisons, and prisons that house persons who have committed serious crimes cannot be free of discomfort.

There have been significant changes over the years in prison design since the inception of the California Department of Corrections and Rehabilitation. Older prisons tended to consist of large housing structures with smaller sized cells. Since the mid-1980's, however, in response to tougher sentencing laws resulting in longer sentences and an increased numbers of inmates, prison design changed in the construction of new prisons to allow for smaller housing units with more control. Several designs for cells and dormitory housing units for male inmates have been developed by the Department, as appropriate, for each level of security. The Department has taken into consideration the length of a sentence; for those inmates with longer sentences and that require a higher security level, the cells are larger by approximately 30 square feet than for those inmates with shorter sentences.

COMMENTER #4:

Comment A: When an inmate is unconcerned about privileges or personal property and just wants to be housed alone, whether it be in the general population or in security housing, why

can't they just be allowed to house by themselves? They are not going to react to disciplinary sanctions anyway.

Accommodation: None.

Response A: There is no surplus of available inmate housing to accommodate the commenter or the housing preferences of other inmates. The Department is very careful in reviewing case factors, including mental health, when determining if an inmate is suitable for double celling. If there are no case factors that would preclude a double cell assignment, that inmate would be expected to double cell. Also, see Commenter #2, Response A.

COMMENTER #5

Comment A: It is not appropriate for the Department to not take into consideration specific litigation as a factor when determining housing assignments.

Accommodation: None.

Response A: The commenter does not specify the specific litigation he has in mind. Nonetheless, the Department contends that subsection 3169(b) very clearly states that staff shall ensure that the housing policies regarding special category inmates covered under specific litigation, such as inmates with disabilities or with mental health issues, are to remain in place during the process of assigning inmate housing.

COMMENTER #6

Comment A: If an inmate is undergoing some kind of medical treatment that leaves that inmate in something of a weakened condition, they should not be required to have a cellie if they think they would be unable to defend themselves in the event of an altercation. Also, the institutions have been incorrectly charging inmates with a violation of 3005, Disobeying Orders, for refusing a cellmate.

Accommodation: None.

Response A: There are many factors that must and will be taken into consideration in determining appropriate housing for an inmate. Health, and recovery from a medical procedure, would certainly be one such factor. These regulations provide clarification of the appropriate violation for refusing a housing assignment. Also, see Commenter #2, Response A.

COMMENTER #7

Comment A: Inmates have been double celling for hundreds of years. As such, why would the Department now impose a regulation that forces inmates to double cell? Double celling should still remain voluntary. The effect of this new housing regulation will be a tremendous increase in violent crime in the prison.

Accommodation: None.

Response A: The commenter is correct regarding the history of double celling. As such, these proposed rules are not new, but will now be codified into CCR Title 15 regulations. The purpose of this rulemaking is to articulate in CCR Title 15 the long standing procedure by which housing assignments are determined. In fact, the only change to this long standing procedure is the implementation of stricter remedial sanctions should an inmate refuse to accept assigned housing.

Double celling has never been voluntary. However, inmates will not be forced into any kind of program, including housing. If, after careful consideration of an inmate's case factors by a classification committee, an inmate interferes with a housing assignment, the inmate will be subject to increasing levels of remedial sanctions. It is not, and has never been, the Department's intent to capriciously assign an inmate to any available cell. Careful consideration of all case factors, including consideration of an inmate's preference regarding a housing assignment, will continue to be considered when a housing assignment is made. The Department has been highly successful in its efforts over the years to develop housing assignments that do not result in violence between cellmates. The Department has every intent to continue that practice, although any level of violence will certainly not be tolerated. Such facilities are staffed 24 hours 7 days a week, and staff can be notified and respond accordingly should an incompatible situation arise. Inmates must be held accountable for all their actions including how they live together, much in the same way they will when they return to society.

COMMENTER #8

Comment A: This regulation now means that the Department will be forcing inmates into cells designed for only one person, and to be housed with inmates that have not been tested for communicable diseases. The Department should be investigated and should its have rule making authority delegated to an alternative administrative agency that has no interest to gain by making constitutional legal rules that apply to inmates.

Accommodation: None.

Response A: The Department will not be forcing inmates into cells; commenter is directed to Commenter #7, Response A. The double celling of inmates is not unconstitutional; commenter is directed to Commenter #3, Comment A. Also, pursuant to Federal law, medical information cannot be shared with other persons. However, medical as well as mental health conditions are factors taken into consideration when determining appropriate housing for an inmate. The California Penal Code provides the authority for the Department to develop its regulations.

COMMENTER #9

Comment A: Forcing inmates to accept integrated housing assignments is tantamount to cruel and unusual punishment. In doing this, the Department is using inmates as human test subjects without their informed consent. This is inappropriate, particularly for inmates requiring protective housing.

Accommodation: None.

Response A: As noted in the Initial Statement of Reasons and in earlier response to comments, this action puts into CCR Title 15 regulations that codify current practices. Although commenter is expressing concerns about a housing related subject, the comments appear to be more directly related to the specific subject of integrated housing rather than just the double celling of inmates. Commenter is advised that the public comment period for this subject matter ended in late 2007. However, as to housing in general, the Department recognizes the benefit of successfully and peacefully housing inmates in the same cell. Inmates are involved in the process of evaluating their housing assignment, at least to some extent, such as participating in the committee process to determine appropriate housing, and offering suggestions about suitable cellmates. Inmates are not "forced" to do anything,

however, the disciplinary ramifications of not participating in reasonable housing assignments are laid out in this regulatory text. Also, see Commenter #1, Response C.

COMMENTER #10

Comment A: Commenter states that on a number of occasions he has had safety issues with several of his cellmates resulting in injuries or even being raped. Commenter agrees with the proposed regulations because he feels that they would allow an inmate who has been the victim of in-cell abuse to be placed on single cell status.

Accommodation: None.

Response A: Victimization does not automatically translate to placement on single cell status. Short-term assignment to Administrative Segregation, for example, may be the best response to protect an inmate during the investigation of an incident. Victimization is just one of many factors that must be taken into consideration by a classification committee when evaluating appropriate housing for an inmate. Always, safety of staff and inmates is uppermost in the minds of committee members when making any kind of housing or program decisions. Also, see Commenter #2, Comment A.

COMMENTER #11

Comment A: Commenter contends that he cannot and will not be housed with any other inmate.

Accommodation: None.

Response A: The Department acknowledges that not all inmates will be successfully double celled. However, the approval of an inmate regarding their housing assignment is not pivotal. Most inmates prefer to be celled with another human being. Again, all these factors must be taken into consideration when evaluating a housing assignment. A classification committee will assess each inmate's housing status, and whether they can be successfully double celled or should be single celled. The housing assignment will be reviewed at least at each inmate's annual review. Also, see Commenter #2, Response A.

COMMENTER #12

Comment A: Commenter states that he is in opposition to the implementation of this regulation because the Department has failed to secure and protect inmates with an "R" suffix designation that are sex offenders.

Accommodation: None.

Response A: See Commenter #10, Response A.

COMMENTER #13

Comment A: Adoption of these regulations opens the door to abuse by CDCR employees who will no doubt use these regulations to force inmates who are clearly not compatible to cell together, resulting in death or serious injuries.

Accommodation: None.

Response A: Commenter is reminded that these regulations do not change the process by which a housing assignment is made. They only change are the disciplinary ramifications for failure to comply with a housing assignment. The Department gains nothing from

disregarding security risks when making housing assignments. Also, see Commenter #2, Comment A.

Comment B: Some people are not compatible to be housed with anyone, and it has nothing to do with a mental or medical disorder.

Accommodation: None.

Response B: See Commenter #11, Comment A.

Comment C: Commenter notes that the length of an inmate's sentence is one of the factors to be considered in the process of making a housing assignment, and expressed concern that the word "length" was too subjective. Commenter went on to say that an inmate serving a long sentence should not be forced to live with another inmate of the same sex, because an assigned cell becomes their home, and homosexual tendencies may arise.

Accommodation: None.

Response C: Commenter is correct in noting that the length of an inmate's sentence is used as a factor when making a housing assignment. Generally, staff will try to house inmates that have shorter sentences, or that have longer sentences, together in the same cell for compatibility purposes. Also, see Commenter #11, Comment A.

COMMENTER #14

Comment A: This continued double cell policy has been a blatant and lethal failure, and all too often has resulted in the rape, murder, or battery of so-called "compatible inmates."

Accommodation: None.

Response A: The Department points out that the commenter does not provide information to support his allegation. Also, see Commenter #7, Comment A, and Commenter #11, Comment A.

COMMENTER #15

Comment A: Since this formal regulation package is based on a 2003 memo, will all CDC-115's issued prior to that year for refusing to double cell be rescinded?

Accommodation: None.

Response A: The 2003 memo in question did not change existing policy regarding inmate housing assignments. It merely reiterated the housing assignment process that had been in existence for many years. Inmates that refused a housing assignment have not been issued a CDC-115 for refusing to double cell, but rather for refusing a direct order. As such, it will not be necessary to rescind any CDC-115's. It should be noted that the new regulation, pursuant to Title 15 subsection 3269(g), will now result in charging an inmate with obstructing a peace officer in the performance of their duties by refusing to accept assigned housing.

COMMENTER #16

Comment A: Commenter feels it should be against the law to force two inmates to cell with each other.

Accommodation: None.

Response A: See Commenter #13, Response A.

COMMENTS #17

Comment A: This regulation will affect all inmates currently on single cell status, requiring them to have to go through the process all over to once again gain single cell status and become injured or possibly killed in the process. It is impossible to get along with a cellmate due to the unreasonable restrictions or demands they will impose.

Accommodation: None.

Response A: See Commenter #11, Response A.

COMMENTS #18

Comment A: Commenter contends he is a single celled inmate with a life long history of mental illness, wrongly convicted of a sex crime and subsequently given a prison sentence, and does not feel the Department has addressed several sections of the Penal Code which states in part that it is unlawful to inflict treatment that would impair the health of an inmate with the new regulations.

Accommodation: None.

Response A: See Commenter #11, Response A.

COMMENTS #19

Comment A: It is not fair that the Department will increase the penalty for an inmate who refuses a housing assignment.

Accommodation: None.

Response A: The Department contends that inmates must follow all rules as set forth in Title 15, as well as follow lawful instructions from staff. The Department also strives to be consistent with its disciplinary processes. Recently the Department promulgated regulations, and the Office of Administrative Law filed them with the Secretary of State, regarding Integrated Housing Assignments wherein the same disciplinary process has been established for refusing an integrated housing assignment. The Department has always contended that disobeying orders cannot be tolerated. However, willfully obstructing a peace officer in the performance of their duty, a long established regulation in Title 15 subsection 323(f)(6) based on the Penal Code, has been determined to be a more appropriate rules infraction when an inmate obstructs a peace officer and refuses a housing assignment. Commenter is advised that the process of assigning housing to an inmate is by no means arbitrary. Rather, the process involves an in-depth review of an inmate's central file and case factors, followed by a committee decision, to determine a housing assignment that best suits the inmate, the inmate's program, and the needs of the institution.

Comment B: The Department's current housing policy is for inmates to determine if they are compatible with each other, particularly those with safety concerns. This policy ought to apply to all inmates in all institutions statewide. The Department's failure to enforce housing assignments for all inmates has already been proven to result in disastrous consequences of sometimes epic proportions, and these new regulations will only make matters worse.

Accommodation: None.

Response B: The proposed regulations do not set forth any new housing policy, with the exception of the enhanced disciplinary penalty. Inmates do have input into their housing

assignments, and that will continue to be the case. Inmates will not, however, dictate to staff what their housing assignments will be, nor does the Department develop its rules and policies based on inmate politics. The Department's very deliberate housing assignment assessment process has resulted in few altercations statewide; the Department will continue to strive to keep that record. Facilities are staffed 24 hours 7 days a week, and staff can be notified and respond accordingly should an incompatible situation arise. Inmates must be held accountable for all their actions, much in the same way they will in society.

Comment C: It is a legal right guaranteed by law that an inmate be allowed to possess their own legal paperwork/materials, as opposed to a privilege granted to the inmate by the Department.

Accommodation: None.

Response C: Although the above comment does regard an aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment is insufficiently related to the specific proposed such that no meaningful response can be formulated by the Department in refutation of or accommodation of the comment.

Comment D: The Department's implementation of these regulations regarding inmate housing assignments, at a time when the Department is experiencing overcrowding for which there is no cure, is counterproductive and poses a threat to all institutions.

Accommodation: None.

Response D: See Commenter #7, Comment A, and Commenter #11, Comment A.

COMMENTS #20

Comment A: The proposed double cell assignment regulation would require inmates who are otherwise cleared for double cell housing to accept whatever housing assignment is directed by prison staff.

Accommodation: None.

Response A: See Commenter #1, Response A.

Comment B: The proposed regulations will fail much in the same way that integrated housing assignments will fail, because the Department still uses race as a factor when prohibiting inmates from participating in a facility's normal program activities. For example, if one race is locked down and happens to be housed with a member of another race, then that person would have to be locked down also.

Accommodation: None.

Response B: The Department has developed a highly complex classification system over the years that allows for appropriate institutional placement of inmates. Much of this classification system's assessment process is based on behavior, both prior to and during incarceration. Generally, those inmates with a lower classification will be housed with inmates with a similar score in a facility where there are fewer program interruptions. Correspondingly, inmates with higher scores will be housed in facilities where program interruptions may be more likely. Commenter is correct in anticipating that inmates of different races that are housed together will at times be impacted by lockdowns. The Department contends, however, that the very process of integrating inmates when developing

housing assignments will over time break down racial barriers and result in fewer racial incidents. In addition, for the majority of inmates who will be paroled, this will be good preparation to successfully reintegrate back into society.

Comment C: This double cell regulation, much as the integrated housing regulations, will fail because of the existing strict racial segregation code that exists on most yards.

Accommodation: None.

Response C: The Department does not set its rules to accommodate inmate politics. The proposed double cell regulations do not deviate from the existing method of assigning inmate housing, with the exception of the expanded disciplinary portion. See Commenter #1, Response A. The Department agrees that there is a racial segregation code that exists, which is what the integrated housing process will begin to break down. In each state that has moved to a more integrated housing process, racial tension has in fact decreased over time and racial barriers have diminished.

Comment D: Although the Department should be commended for trying to find a way to alleviate overcrowding, the overcrowding issue is really the fault of the Legislature for their failure to address this problem.

Accommodation: None.

Response D: This proposed regulatory action was not developed to address overcrowding. The Department does not anticipate there will be any change in housing as a result of this regulatory action. The purpose is to place in CCR Title 15 regulations of existing practices for inmate housing.

COMMENTER #21

Comment A: Forcing inmates to cell together who have nothing in common is only going to enhance an already hostile environment.

Accommodation: None.

Response A: See Commenter #1, Response A.

COMMENTER #22

Comment A: Inmates should only be allowed to be housed with other inmates of their own choosing. To be housed with someone unknown causes psychological problems.

Accommodation: None.

Response A: See Commenter #1, Response A.

COMMENTER #23

Comment A: Since about 95% of the inmate population is already double celled or in a dormitory setting, why should these regulations be developed at this time?

Accommodation: None.

Response A: The Department contends that the reasons and the necessity for this regulatory action have been explained in the Initial Statement of Reasons.

Comment B: The proposed adoption of this regulation will do nothing except promote more violence. Inmates should be allowed to cell with whom they want.

Accommodation: None.

Response B: See Comment #1, Response A.

Comment C: This entire proposal has not been carefully thought out, as it does not take into consideration what inmates want, or allow for inmates to be single celled if they need some time for personal growth.

Accommodation: None.

Response C: See Commenter #1, Response A, and Commenter #2, Response A.

Comment D: The Department is asking the public to fully support a measure or bill that they have no intention of fully informing the public about. There is certainly no mention of hearings on this topic being held in other cities or counties that will have family or friends affected by these decisions.

Accommodation: None.

Response D: The Department contends that it is carefully adhering to the processes as set forth in the Administrative Procedures Act regarding the public adoption of this proposed regulation. There has been sufficient notice to the public, and a number of responses were received by the Department, the comments of which are being addressed in this Final Statement of Reasons.

Comment E: This proposal does nothing to stem the overcrowding problem, but does suggest someone heading the Department is having a power trip crisis. How is it ok if an inmate severely beats another inmate, goes to Administrative Segregation, and is immediately required to be double celled?

Accommodation: None.

Response E: The Department is very careful in reviewing case factors, including mental health, when determining if an inmate is suitable for double celling. If there are no case factors that would preclude a double cell assignment, that inmate would be expected to double cell. Also, see Commenter #2, Response A.

Comment F: The Department wants the public to grant to them the power to force inmates into an unsafe situation. The Department would use these regulations if adopted in an attempt to force known enemies into a cell together, understanding its brutal outcome.

Accommodation: None

Response F: The Department would never house known enemies together. Also, see Commenter #2, Response A.

COMMENTS #24

Comment A: The proposed regulatory action does not meet constitutional standards because it eliminates certain requirements and procedures agreed to in various litigation regarding double celling for inmates at Pelican Bay State Prison, especially for inmates in segregated housing.

Accommodation: None.

Response A: See Commenter #1, Response A; Commenter #19, Response A; and Comment #20, Response B. Further, Pelican Bay State Prison is a unique prison in CDCR

because it houses more inmates that engage in serious and disruptive behavior than any other CDCR prison. As a result, this prison conducts reviews of an inmate's case factors when making a housing assignment that are very complex due to the high rates of disruptive behavior exhibited by this prison's population. Since these regulations put into CCR Title 15 the long-standing statewide housing practices of the Department, the proposed regulatory action will not change any aspect of Pelican Bay State Prison's housing practices. All previous agreements made as a result of litigation regarding the celling of inmates at Pelican Bay State Prison will remain in force.

Comment B: The proposed regulations are vague in that they do not specify what documents and information prison officials must review when making an inmate housing assignment.

Accommodation: None.

Response B: Commenter is correct in noting that there is little that is specific in these regulations about what documents must be reviewed when staff are making a housing assignment. That is primarily because all aspects of an inmate's numerous case factors located in the Central file must be taken into consideration and will be part of the decision making process. A number of the most significant case factors, in whatever documents that information may be contained ranging from Board of Parole Hearing Reports to classification chronos, have been included in the proposed regulations. Commenter is also referred to the classification regulations contained in CCR Title 15 sections 3375 through 3379.

COMMENTER #25

Comment A: The Department's medical care system is broken and beyond repair, and the harm that has been done to inmates in the system could not be more grave. The threat of future injury and death are virtually guaranteed in the absence of more action to improve medical care.

Accommodation: None.

Response A: Although the above comment does regard an aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment is insufficiently related to the specific proposed such that no meaningful response can be formulated by the Department in refutation of or accommodation of the comment.

Comment B: The Department's solution to overcrowding is to make all of the gymnasiums into makeshift dormitories with triple decker bunks.

Accommodation: None.

Response B: Although the above comment does regard an aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment is insufficiently related to the specific proposed such that no meaningful response can be formulated by the Department in refutation of or accommodation of the comment.

Comment C: Hundreds of inmates have been killed by their cellmates, and thousands have been injured. Staff do not care who is celled together, resulting in a bloody history of double celling.

Accommodation: None.

Response C: See Commenter #1, Response A; Commenter #7, Response A; and Commenter #11, Response A.

COMMENTER #26

Comment A: The statement that double celling is the norm is a misleading declaration. There are national correctional associations that claim that long term prisoners should be single celled. You can't take what is actually a single cell and just make it a double cell by bolting another bed to the wall.

Accommodation: None.

Response A: See Commenter #2, Response A, and Commenter #3, Response A.

COMMENTER #27

Comment A: Placing two people in a double cell, knowing the inherent danger involved, is deliberate indifference. These regulations advocate housing inmates at 200% of design capacity, which is unconstitutional.

Accommodation: None.

Response A: See Commenter #3, Response A.

Comment B: Punishing an inmate for refusing to follow an order dangerous to himself, such as moving into a cell with someone else, is a violation of the constitution.

Accommodation: None.

Response B: See Commenter #1, Response A.

Comment C: Allowing inmates to cell only with someone of their own choosing will result in fewer sexual assaults.

Accommodation: None.

Response C: See Commenter #1, Responses A and B, and Commenter #2, Response A.

COMMENTER #28

Comment A: The Department forces inmates to house with other inmates that have infectious diseases without disclosing what the disease is, resulting in both inmates coming down with the disease, which is not right.

Accommodation: None.

Response A: This is not true. The Department is keenly aware of and interested in the prevention of all disease, for the ongoing health and safety of staff and inmates. Inmates with infectious diseases are housed in different accommodations to facilitate containment of the infection. The Department also has mandated programs set up for both staff and inmates to test for infectious disease, such as annual tuberculosis testing, and the Department participates in general public health efforts. Inmate health care is under the management of a federal court receiver who has been given broad authority to oversee and improve the health care of inmates. Further, see Commenter #1, Response A; Commenter #6, Response A; and Commenter #8, Response A.

COMMENTS #29 and #30

Comment A: The state is violating an inmate's rights by putting two inmates in a cell designed for barely even single cell occupancy.

Accommodation: None.

Response A: See Commenter #3, Response A.

Comment B: The Department claims that the proposed regulations will have no significant fiscal impact, but this is not true as the proposed changes will result in an increase in cell violence. This proposed change does not allow for an inmate to refuse a cellmate for any reason.

Accommodation: None.

Response B: See Commenter #1, Response A; Commenter #2, Response A; and Commenter #7, Response A.

Comment C: Lowering the prison population would save billions of dollars per year in housing costs.

Accommodation: None.

Response C: Although the above comment does regard an aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment is insufficiently related to the specific proposed such that no meaningful response can be formulated by the Department in refutation of or accommodation of the comment.

Comment D: The state has spent billions of dollars trying to stop the spread of infectious disease in the prisons, and double celling does nothing to prevent the spread of such diseases.

Accommodation: None.

Response D: See Commenter #6, Response A, and Commenter #8, Response A.

COMMENTER #31

Comment A: The size of a cell is too small for even one inmate, much less for two inmates.

Accommodation: None.

Response A: See Commenter #3, Response A.

Comment B: The length of confinement cannot be ignored in deciding whether the confinement meets constitutional standards.

Accommodation: None.

Response B: See Commenter #13, Response C.

Comment C: The impact of double celling ignores the cumulative impact of other conditions already deemed impermissible in California.

Accommodation: None.

Response C: Although the above comment does regard an aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment is insufficiently related to the specific proposed such that no meaningful response can be formulated by the Department in refutation of or accommodation of the comment.

COMMENTER #32

Comment A: Because of the recent integrated housing regulations, and now with this new double celling regulation, inmates have lost their liberty interest in being able to choose a compatible cell mate.

Accommodation: None.

Response A: See Commenter #1, Response A; Commenter #2, Response A, and Commenter #7, Response A.

Comment B: Forcing inmates to accept integrated housing assignments is tantamount to cruel and unusual punishment. Prison politics will not allow inmates of different races to house together.

Accommodation: None.

Response B: See Commenter #9, Response A.

Comment C: It is the Department's practice to find both cell mates guilty if contraband is found in a cell, even when one accepts the responsibility. This is not fair because one inmate can't search another inmate's property.

Accommodation: None.

Response C: The Department has found that historically when contraband is found in a cell, the inmate with the longer sentence will accept responsibility, regardless if it is his contraband. Also, it is unlikely that one inmate would not have knowledge at some point should the other inmate introduce contraband into the cell. Whether or not both cellmates are charged for contraband is a matter of evidence and fact and not a matter of double celling.

COMMENTER #33

Comment A: If the Department is looking for a way to reduce overcrowding, this new regulation will do it. This insane new regulation makes it possible for less than stellar guards to put members of rival gangs into cells and close the doors.

Accommodation: None.

Response A: See Commenter #1, Responses A and C; Commenter #7, Response A; and Commenter #9, Response A.

COMMENTER #34

Comment A: The regulations at issue are designed to provide the disciplinary framework to punish inmates who refuse particular cell assignments. However, as integration begins, will rogue staff seek to place rival gang members together? For the inmates, integration will be a nightmare.

Accommodation: None.

Response A: See Commenter #9, Response A.

COMMENTS #35

Comment A: There is very little in the way of rehabilitation that goes on in the prisons. It is as though the word rehabilitation is used just so that the public thinks it is happening. The few programs that are available are inaccessible due to severe overcrowding.

Accommodation: None.

Response A: Although the above comment does regard an aspect of the subject proposed regulatory action and must be summarized pursuant to Government Code Section 11346.9(b)(3), the comment is insufficiently related to the specific proposed such that no meaningful response can be formulated by the Department in refutation of or accommodation of the comment.

Comment B: It is no mystery why the Department does not wish to properly study the effects that double celling has had on inmates. It is due to the deliberate indifference of the Department towards its inmate population that the CDCR is nothing but a human warehouse and not the institution of rehabilitation that it should be.

Accommodation: None.

Response B: See Commenter #1, Response A, and Commenter #7, Response A.

Comment C: Who was the “brainiac” that came up with the idea to take two convicted criminals and house them together in a space smaller than most bathrooms and expect to see some kind of positive results?

Accommodation: None.

Response C: See Commenter #3, Response A.

Comment D: Double celling can play a big part in the spreading of a virus, and no inmate can prevent their “cellie” from bringing contraband into the cell if they want.

Accommodation: None.

Response D: See Commenter #6, Response A; Commenter #8, Response A; and Commenter #32, Response C.

COMMENTS #36

Comment A: Commenter is deeply concerned that the proposed regulations will endanger inmates who are at risk for sexual abuse and will punish those who seek to protect themselves from such abuse. The danger of sexual abuse within one’s cell in a CDCR facility is consistent with national data. An inmate classification system must ensure that vulnerable prisoners are housed separately from likely predators.

Accommodation: None.

Response A: The propensity to be the victim of sexual abuse is definitely a case factor that would be considered when developing a housing assignment. The Department has also affirmed the guidelines in the federal Prison Rape Elimination Act. Also, various aspects of commenter’s concerns are discussed in responses to Commenter’s # 1, 2, 7, 10, 11, and 19.

COMMENTS #37

Comment A: The proposed regulations are to be adopted to prevent inmates from being single celled so as to reduce cost. The opposite will occur and costs will go up from increased litigation due to all the violence that will occur.

Accommodation: None.

Response A: See Commenter #1, Response A, and Commenter #7, Response A.

Comment B: Some inmates are simply not compatible with anyone, and it has nothing to do with any mental or medical disorder. There is not a factor among those listed in the proposed text which describes this type of inmate as human idiosyncrasies that prevent incompatibility to be housed with anyone.

Accommodation: None.

Response B: Commenter is correct – there are those few individuals that for some reason should not be housed with anyone else. The proposed regulations, as was explained in the Initial Statement of Reasons, will not change any of the long existing processes for assigning appropriate housing. If an inmate has a long history of needing to be single celled, that will continue. Also, the continued need for single cell status will be reviewed at least at each annual review.

Comment C: Inmates that are serving a long sentence, particularly when they live out their natural life in prison, may develop the state of mind where their assigned cell becomes and is their home. These inmates must be allowed to be single celled if they so chose.

Accommodation: None.

Response C: See Commenter #2, Response A.